

RULES GOVERNING OPEN MEETINGS,
CLOSED SESSIONS AND RECORDS OF THE
BOARD OF GOVERNORS OF THE
STATE BAR OF CALIFORNIA
(Adopted August 17, 1985 effective October 1, 1985)

ARTICLE 1
GENERAL PROVISIONS

Section 1: Public Policy; Proceedings Conducted Openly

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting these rules the Board of Governors of The State Bar of California finds and declares that it is the intent of the law that actions of the board be taken openly and that its deliberation be conducted openly.

Section 2: Provision of Copy of Rules to Members of the Board and Public

The secretary shall provide a copy of these rules to each member of the Board of Governors upon his or her election or appointment or assumption of office. A copy of these rules shall be available upon request free of charge to any person requesting the rules, and shall be posted in a conspicuous place at the offices of the State Bar.

Section 3: Board, Definition

As used in these rules, "Board of Governors" or "board" or "board committee" means the governing board of The State Bar of California or any committee of board members; "presiding officer" means the president or vice-president who presides at board meetings, or the chair or vice-chair who presides at board committee meetings. **However, special advisory committees or task forces composed of board members comprising less than a quorum of the board that have no decisionmaking authority, but are created from time to time to make recommendations to the board, are not board committees for the purposes of these rules.**

Section 4: Meeting, Definition

- (a) **As used in these rules, "meeting" includes any congregation of a majority of the members of the board or board committee at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the State Bar.**
- (b) **Nothing in this section shall impose the requirements of these rules upon any of**

the following:

(1) Individual contacts or conversations between a member of the board and any other person.

(2) The attendance of a majority of the members of the board or a board committee at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to the State Bar, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the State Bar.

(3) The attendance of a majority of the members of the board or a board committee at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the State Bar, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the State Bar.

(4) The attendance of a majority of the members of the board or a board committee at an open and noticed meeting of a State Bar committee, commission or task force or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the State Bar.

(5) The attendance of a majority of the members of the board or a board committee at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the State Bar.

(6) The attendance of a majority of the members of the board at an open and noticed meeting of a board committee, provided that the members of the legislative body who are not members of the board committee attend only as observers.

Section 5: Action Taken, Definition

As used in these rules, “action taken” means a collective decision made by a majority of the members of the board or a board committee, a collective commitment or promise by a majority of the members of the board or a board committee to make a positive or negative decision, or an actual vote by a majority of the members of the board or a board committee when sitting as a body, upon a motion, proposal, resolution or ordinance.

ARTICLE 2 OPEN MEETINGS

Section 1: Meetings to be Open and Public; Attendance

- (a) All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except as otherwise provided in these rules.
- (b) **Except as otherwise authorized by these rules, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the board or a board committee to develop a collective concurrence as to action to be taken on an item by board or board committee members is prohibited.**
- (c) **Notwithstanding the provisions of this section, the board may use teleconferencing for the benefit of the public in connection with any meeting authorized by these rules. The teleconferenced meeting shall comply with all requirements of these rules. All votes taken during a teleconferenced meeting shall be by rollcall.**
 - (i) **For the purposes of this section “teleconference” means a meeting of the board, the members of which are in different locations, connected by electronic means, through either audio or video, or both.**
 - (ii) **If a board meeting is held by teleconference, a teleconference location accessible to the public shall be available in both Los Angeles and San Francisco and these teleconference locations shall be identified in the notice and agenda for the meeting.**

Section 2: Mailed Notice of Meetings; Inclusion of Agenda; Time; Request for Notice and Renewal; Annual Charge for Sending

- (a) The secretary shall give mailed notice of every regular meeting ~~and any special meeting~~ of the board or board committee which is called, at least ten days prior to the date set for the meeting, to any person who has filed a written request for such notice with the secretary. **The secretary shall also make notice available on the Internet. The secretary shall provide notice to each board member and shall make notice available on the Internet at least 48 hours in advance of any special meeting.** Any mailed notice shall include or incorporate the specific agenda for the meeting and shall be mailed at least ten days prior to the date set for the meeting to which it applies, except that the secretary may give such notice as the secretary deems practical of meetings pursuant to section 2 of article 4 of these rules, called less than ten days prior to the date set for the meeting. The agenda need not include a list of any witnesses expected to appear at the meeting, but shall state the specific items of business to be transacted or discussed.
- (b) All meetings of the board or board committees shall be open to the public unless authorized to be closed pursuant to article 3 of these rules. Prior to holding any closed session, the notice required for the meeting by subdivision (a) shall state the general reason for the closed session, and shall cite the specific authority therefor. Nothing in

these rules shall be construed to require or authorize the disclosure of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge particular facts concerning the closed session.

(c) Any request for notice pursuant to this rule shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year.

(d) At the secretary's discretion, a person may request, and may be provided, notice of only a specific meeting or meetings, or notice of only those meetings at which a particular subject or subjects specified in the request will be discussed.

(e) A person may request, and shall be provided the open meeting agenda packet distributed to board members, and the board may establish a reasonable charge for furnishing any such packet based on the estimated cost of such service.

Section 3: Agendas and Other Writings Distributed for Discussion or Consideration at Public Meetings; Public Records; Inspection; Closed Sessions

(a) Agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of the board for discussion or consideration at a public meeting of the board or board committee, are public records as soon as distributed, and shall be made available to the public by the secretary provided that this subdivision (a) shall not include written memoranda prepared for the board, or its members, by a General Counsel attorney or attorney associated by General Counsel holding a fiduciary relationship to the board of attorney to client.

(b) The board may charge a reasonable fee, not to exceed the actual costs of reproduction and mailing, if any, for documents furnished pursuant to this section.

(c) This section shall not be construed to be applicable to any writings prepared for and properly discussed in a closed session of the board or board committee.

Section 4: Disorderly conduct during meeting: clearing of room

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the board conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be conducted in such a session.

Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the board from establishing a procedure for readmitting an

individual or individuals not responsible for wilfully disturbing the orderly conduct of the meeting.

Section 5: Tape or film records made of meetings

Any tape or film record of an open meeting made for whatever purpose by or at the direction of the State Bar shall be subject to inspection, but may be erased or destroyed 30 days after the taping or recording.

ARTICLE 3 CLOSED OR EXECUTIVE SESSIONS OF THE BOARD

Section 1: Closed or Executive Sessions of the Board of Governors

Every regular or special meeting of the Board of Governors, or any board committee which exercises any final authority of the Board of Governors delegated to it by the Board of Governors, shall be open to the public, except those meetings or portions thereof relating to matters specified in section 6026.5 of the Business and Professions Code.

Section 2: Closed or Executive Sessions of Board Committees When Not Authorized to Act Finally for the Board of Governors

Every meeting of every board committee acting in an advisory capacity to the Board of Governors shall be open to the public to the extent specified in section 6026.5 of the Business and Professions Code relating to meetings of the Board of Governors, provided that:

- (a) Matters subject to closed session at Board of Governors meetings (i.e., those within the categories of matters specified in the lettered subdivisions of section 6026.5 of the Business and Professions Code) shall be closed and shall not be opened by a board committee without the specific approval of a majority of a duly constituted quorum of the Board of Governors.
- (b) A board committee shall not open a board committee meeting to the public where the matters being considered (1) fall within the attorney-client privilege, or (2) are otherwise privileged from disclosure, or (3) involve information received or held by the State Bar that is protected by the California constitutional guarantee of privacy, without the specific approval of a majority of a duly constituted quorum of the Board of Governors.
- (c) A board committee may hold closed sessions regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees or other matters within the scope of representation of its represented employees. Closed sessions of a board committee as permitted in this

subdivision shall be for the purpose of reviewing suggested positions and instructing the State Bar's designated representatives. Closed sessions, as permitted in this subdivision, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

For the purposes enumerated in this subdivision, a board committee may also meet with a conciliator or mediator who is participating in the proceedings.

(d) A board committee may confer in closed sessions prior to the purchase, sale, exchange, or lease of real property by or for the State Bar for the purpose of giving instructions to the negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. For purposes of this subdivision, the negotiator may be a member of the board. For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease. Nothing in this subdivision shall preclude the board or a board committee from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (a) of Business and Professions Code section 6026.5.

Section 3: Pending or Prospective Litigation; Closed Session; Notice; Memorandum

Nothing in these rules shall be construed to prevent the board, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding prospective or pending litigation when discussion in open session concerning those matters would prejudice the position of the State Bar in the litigation or prospective litigation.

For purposes of this section, litigation shall be considered prospective or pending when any of the following circumstances exist:

- (a) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the State Bar is a party, has been initiated formally.
- (b) A point has been reached where, in the opinion of the board on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the State Bar; or
- (c) Based on existing facts and circumstances, the board has decided to initiate or is deciding whether to initiate or defend against a claim or litigation.

Prior to holding a closed session pursuant to this section, the presiding officer shall state publicly to which subdivision it is pursuant. If the session is closed pursuant to subdivision (a), the presiding officer shall state the title of or otherwise specifically identify the litigation to be discussed, unless the presiding officer states that to do so would jeopardize the State Bar's ability

to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

For purposes of this section, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, “litigation” includes State Bar participation or prospective participation as an amicus curiae but only if General Counsel certifies that such participation or prospective participation will affect pending or prospective litigation to which the State Bar is or will become a party, or that based on existing facts and circumstances there is a significant exposure of litigation against the State Bar.

Section 4: Closed Sessions; Statement of Reasons and Legal Authority; Scope of Coverage; Notice

Prior to commencing any closed session, the presiding officer or secretary shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session the board may consider only those matters covered in the statement. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

Section 5: Minute Book Record of Closed Sessions; Inspection

The secretary or a designee shall attend each closed session of the board or board committee and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection, and shall be kept confidential. The minute book shall be available only to members of the board and designated employees of the State Bar. Such minute book may, but need not, consist of a recording of the closed session.

ARTICLE 4 AGENDAS, EMERGENCY ITEMS AND MEETINGS

Section 1: Policy

No item shall be added to an agenda subsequent to the ten days notice required by subdivision (a) of section 2, article 2 of these rules, nor final action taken on items of business not appearing on an agenda, except as provided in this article.

Section 2: Late Added Items; Unnoticed Meetings

The presiding officer may add items to be transacted to the agenda of an open meeting or closed session, or schedule unnoticed meetings or closed sessions, or arrange for the board or a board committee to take action voting by fax poll, should an emergency justify such an action. For purposes of this section “emergency” means a combination of circumstances or the resulting state that calls for immediate action before the next regularly noticed meeting or closed session. Action by fax poll is appropriate where the subject matter requires no discussion or deliberation and where the same action taken at a regular board or board committee meeting would appear on the consent agenda. A statement of any action taken at an unnoticed meeting or any matter considered at an unnoticed closed session shall be included in the notice required by subdivision (a) of section 2, article 2 of the rules, for the next succeeding properly noticed meeting. The subject matter of any item added to the agenda of a properly noticed closed session shall be stated by the presiding officer prior to commencement of the closed session. Nothing in this section shall be construed to require or authorize the disclosure of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge particular facts concerning the closed session. (Amended June 10, 2000.)

ARTICLE 5 BOARD RECORDS

Section 1: Definition of Records

“Records” means any writing containing information relating to the conduct of the board’s business prepared, owned, used or received by the State Bar, regardless of physical form or characteristics, in the custody of the State Bar on or after November 1, 1985. The secretary shall endeavor to make available as soon as feasible such records in the custody of the secretary prior to November 1, 1985.

Section 2: Times When Records are Open to Inspection

Records of the board are open to inspection at all times during the office hours of the State Bar, and every person has a right to inspect any such record, except as hereinafter provided.

Section 3: Records Exempt From Disclosure Requirements

Nothing in this article shall be construed to require disclosure of records that are any of the following:

- (a) Records directly relating to matters that would be exempt from disclosure at meetings of the Board of Governors or a board committee.

(b) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law including, but not limited to, court decisions, Rules of Procedure of the State Bar, provisions of the Evidence Code relating to privilege, and provisions of law relating to privacy.

(c) Records involving or related to advice or representation, litigation or claims, in the custody of or maintained by the General Counsel, provided that records shall not be transferred to the General Counsel to evade the disclosure provisions of this article.

(d) Personal drafts, notes or memoranda which are not maintained nor distributed in the course of board business.

Nothing in this section is to be construed as preventing the board from opening its records to public inspection, unless disclosure is otherwise prohibited by law.

Section 4: Withholding Records from Inspection; Justification; Public Interest

The secretary shall justify withholding any record by stating the express provision of law under which the record is exempt from disclosure.

Section 5: Right to Copy of Identifiable Public Records; Fees; Time Limits

Any person may receive in accordance with this article a copy of any identifiable record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so.

Except with respect to records exempt from disclosure, the secretary, upon any request for a copy of records which reasonably describes an identifiable record or information produced therefrom, shall in accordance with this article make the records available as soon as practicably possible to any person upon payment of reasonable fees not to exceed the cost of reproduction and mailing. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

The secretary, upon any request for a copy of records, shall determine within ten days after the receipt of such request whether to comply with the request, and shall immediately notify the person making the request of such determination and, if the secretary determines to not comply with the request, the reasons therefor.

Section 6: Unusual Circumstances Justifying Extension of Time Limit

In unusual circumstances, as specified in this section, the time limit prescribed in section 5 may be extended by written notice by the secretary to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days.

As used in this section “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request:

- (a) The need to search for and collect the requested records from another office that is separate from the office processing the request.
- (b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.
- (c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more departments of the State Bar having substantial subject matter interest therein.

Section 7: Denial of Request for Records

Nothing in this article shall be construed to permit a delay in access for purposes of inspecting public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

ARTICLE 6

~~IMPLEMENTATION; ADOPTION OF RULES; PROCEDURES~~

~~When adopting or amending these rules, the board shall first comply with both of the following procedures:-~~

- ~~(a) The board shall publish a preliminary draft of the rules which shall be distributed together with notice of the hearing thereon.~~
- ~~(b) The board shall hold at least two public hearings, one in southern California and one in northern California, where all interested persons shall be afforded an opportunity to present oral and written testimony regarding the proposed rules.~~